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ABSTRACT

Poor rural residents are often denied equal protection, due process, and other constitutional rights given to every American. The application of justice in rural America is lacking in its: (1) law enforcement quality, (2) judicial process functions, and (3) participation by the poor and ethnic minorities residing within its jurisdiction. Several aspects of law enforcement in rural America discriminate against certain members of the rural community, often against ethnic minorities. Many rural residents feel the lack of adequate enforcement results from the distances involved and the lack of community resources. Problem areas include: lack of sophisticated criminal justice support services, bail bondsmen, counsel, and qualified judges; time lag between the court decisions (both State and Federal) and application of the new law by rural police officers; and manner in which juries are constituted. Federal intervention in local law enforcement and legal assistance has been through the Law Enforcement Assistance Administration and the Legal Services Program of the Office of Economic Opportunity. Yet, under both of these programs rural residents have been shortchanged. Attempts should be made to distribute the funds from these programs equitably between rural and urban areas. (NQ)

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RURAL JUSTICE AND LEGAL ASSISTANCE

Perhaps, along with its idyllic and pastoral qualities revered by poets and writers, rural America is most especially noted for its paucity of social services and benefits. The absence of equal protection, due process and the other constitutional guarantees, the birthright of every American, are more frequently denied to the poor rural resident than to any other segment of the population. Rural justice, whose roots are found in the swashbuckling past of gunfights at corrals, and lynchings with the entire community as audience, remains an imperfect replica of those bygone days.

The application of justice in rural America is sorely lacking in all of its major features: (1) in the quality of its law enforcement, (2) in functioning of its judicial process, and (3) in the participation in that process by the poor and ethnic minorities that reside within its jurisdiction.

LAW ENFORCEMENT

There are several aspects of the application of the law enforcement power in rural America which discriminate against certain members of the rural community. Too often that discrimination takes the form of an inequitable application of the law against ethnic minorities: Indians both on and off of the reservation, Migrants at their home base and in the seasonal employment stream, Blacks in the rural south, and poor people almost everywhere they reside. For other sectors of the rural population, the reality of distance and lack of community resources often precludes the provision and delivery of what they feel to be adequate law enforcement.

For Indians, justice in rural American takes a form which is often culturally alien. The result--of the 300 juveniles in the Federal Youth Corrections Center in Englewood, Colorado, 100 are Indians. In North Dakota where Indians comprise 2% of the population--the state penitentiary has a 25% Indian population.1/

People who are part of the migrant farm labor force, while seldom arrested outside of their home base states, are left unprotected from abuse by crew leaders and others. Some claim to be virtually ignored by local law enforcement authorities. Local authorities are lax in enforcing child labor laws where agriculture workers are involved. In their home base states, however, the

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1/ American Friends Service Committee, Philadelphia, Pennsylvania.

situation is often quite to the contrary. Chicanos in the Southwest report that they have been singled out for arrest, harassment and abuse by law enforcement officials. 1/ The haphazard way in which the Immigration and Naturalization Service deals with illegal immigrants cuts both ways. Failure to adequately enforce the law permits vast numbers of illegal entrants to replace U. S. citizens and legal immigrants in the farm labor force, breaking strikes and depressing wages. On the other hand, indiscriminate dragnet enforcement results in the arrest, and occasionally, the deportation of persons legally residing in this country.

Blacks in the rural south have lived through generations of abuse at the hands of local law enforcement officials and quasi-official groups who seem to establish their own standards of justice. While the more startling abuses of past years may have abated, there remain continuing examples of discrimination in the application of local criminal justice statutes. The most noteworthy recent example is the case of 20 year old Joanne Little. She is being held for the first degree murder of a jailer whom she is to alleged to have stabbed after he allegedly raped her in the Beaufort, County jail. She had been held, the only woman in the jail, for three months while she should have been transferred to the state correctional facility. 2/

The quality of law enforcement in rural America is generally inferior in its application to poor people. The same discrimination in the delivery of services that exists in urban areas occurs in rural areas as well: the more affluent sectors of the population receive protection of their property. As one poor person said, "People do not see the police as protectors." 3/

When an ethnic minority, or any poor person for that matter, feels abused by the law enforcement process it is often difficult to achieve any redress for that abuse. That results from several factors. The local bar is often reluctant, especially in rural, under-populated jurisdictions, to represent a low-income client in a suit alleging police harassment, brutality and violation of civil rights. Not only is the local lawyer unlikely to take such a case for personal, social or political reasons (in small rural communitites everyone knows everyone else), but there is little financial incentive for him to do so as well. The abused member of America's rural poor does not have the resources to support such

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1/ Mexican-Americans and the Administration of Justice in the Southwest. A Report of the United States Commission on Civil Rights, March, 1970.

2/ The Joanne Little Defense Fund, P. O. Box 1003, Durham, North Carolina, 27702.

3/ Mexican-Americans and the Administration of Justice, at p. 12.

litigation. Only outside assistance, from a legal defense fund or a civil liberties organization can provide the necessary wherewithal to press a case against abusive rural law enforcement. Even then, the litigant may feel that discretion in challenging the local authorities is advised.

Perhaps one of the most striking features of rural law enforcement is its lack of sophisticated criminal justice support services. While one may argue the relative merits of modern rehabilitative criminal justice, it remains that what services are available to many people, are not available to the residents of rural America. Diagnostic centers, halfway houses, therapeutic services and all of the panoply of contemporary rehabilitative schemes fail to make it to rural America. That may be especially true in the case of juvenile justice. Often, rural areas lack separate facilities for juveniles. They are relegated to the only place of incarceration, the county jail where they risk encountering the brutality of hardened criminals, the town drunk, and whoever else might be lodging there. Jails themselves often lack minimal facilities. The recent Little case in North Carolina exemplifies the extreme result of poor jail conditions and administration But there are thousands of examples of crowded conditions and lack of recreation areas which never reach the news media. When, on occasion, one reads of the abuses at a Cummins or Tucker Farm, two of Arkansas' state prisons, you can only hope that they are random aberrations.

Counter-poised to these problems are the feelings on the part of many rural residents of the lack of adequate enforcement which results from distances involved. There is no place for the "man on the beat", and if there were, rural areas lack the financial resources to upgrade their enforcement--whether it be by the addition of personnel, in-service training, more and better equipment, or other methods.

Another problem area in rural law enforcement is the time lag between decisions by the courts, both state and Federal, and application of new law by rural police officers. While, as a problem it is subsummed in the areas mentioned above, it needs separate mention. "Search and Seizure" and "Stop and Frisk" are two areas where rural residents, especially minorities, have suffered unconstitutional indignities.

JUDICIAL PROCESS

Once the rural defendant, in a criminal case, has passed through the hands of the primary law enforcement personnel, he or she often faces another range of individuals and institutions of limited capacities.

Although they often have dubious scruples, bail bondmen are frequently absent from rural areas.

When a criminal defendant is arraigned, there is usually a determination made of the person's ability to retain defense counsel. In rural areas that determination may be more whimsical than in the city. 1/ If the defendant is unable to retain private counsel the court, where a public defender program exists, will refer the defendant to that office. But that will only be the case in 20% of America's rural counties. In the other 80% of rural America, an assigned counsel system is used. Immense problems result from that situation. An overwhelming majority of assigned defense counsel have no previous trial experience, no or limited criminal experience. It has been calculated that an many as 57% of the rural counties are incapable of implementing the ruling of the Argersinger v. Hamlin case which requires counsel whenever a misdemeanant may face a jail term. 2/ One can only guess at what happens to the unrepresented defendant.

On the civil side, counsel, as noted above, may not be available for certain varieties of social or political litigation. On the more mundane level, involving family disputes, land transfers, taxation, and tort claims, the rural client has to resort to fee for service counsel who are often only available for contingency fee cases or when an adequate retainer is available. For those people just over the financial eligibility line for legal services a severe hardship may be evoked by the financial burden of a retained counselor. A similar burden is placed on the person whose income is just over the eligibility line for criminal public defender.

On civil matters, some rural areas have access to a legal services program. Most, however, still lack a legal services attorney. In fact, nationwide, only 8.7% of all legal services dollars went to rural areas in 1973. Meanwhile, as much as 40% of those people defined as poor by the Office of Economic Opportunity live in rural America. 3/

Once represented, the individual must face the judge and jury. Of special note in rural America is the extensive use of Justices of the Peace and Lay Judges. "Many Justice Courts

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1/ Gideon's Second Generation: Eligibility Criteria for California's Public Defender System; Ronald P. Erickson, Paper for the Center on the Administration of Criminal Justice, University of California, Davis, 1974.

2/ The Other Face of Justice: A Report of the National Defender Survey NLADA, 1973.

3/ Office of Economic Opportunity, Annual Summary Report, 1973-74.

are still staffed by lay judges who often are unfamiliar with or inexperienced in the complexities of modern court procedure and adjudication activities." 1/ While lay judges have been a part of our judicial system for centuries, and while they can provide a common sense basis for the administration of justice, they can be quite nonsensical at times. For example, several years ago a lay judge in Eastern Arkansas was asked why a young Vista Volunteer had been severely beaten by a gang of about a dozen men. The Judge answered, "That boy was beaten because he didn't identify himself when he came into town. If he had just told us who he was nothing would have happened."

Lay judges often receive their pay out of the fines levied by their courts. This may cause the brand of justice practiced in his court to be less than even-headed. As former Justice Tom C. Clark said, "One of the most significant weaknesses (is) the archaic method of remuneration. On practical as well as constitutional grounds, I could not approve of any system that... gives the judge a pecuniary stake in the outcome of the case before him." 2/ Yet, in spite of its constitutional invalidity, the system remains in many sectors of rural America.

The quality of justice in Rural America also suffers through the manner in which petit and grand juries are constituted. In one rural community the jurors are selected from the voter registration rolls and then telephoned of their selection to serve on the jury. If they had no telephone, they didn't get selected. In rural areas, and for low-income families, that may preclude jury service. The lack of participation of ethnic minorities on juries is a problem which has received wide attention. It is a problem that remains in many rural areas. 3/

1/ "Final Report on the Unified Trial Court Feasibility Study", Judicial Council of California Report, 1972.

2/ Parajudges and the Administration of Justice, Tom C. Clark, Vanderbilt Law Review 24:1167, November, 1971.

3/ Mexican-Americans and the Administration of Justice, supra.

FEDERAL INTERVENTION

Federal intervention in local law enforcement and legal assistance has been practically nonexistant except for two programs -- grants from the Law Enforcement Assistance Administration and grants from the Office of Economic Opportunity through its Legal Services Program. Under both of these programs people in rural areas have been shortchanged.

LEAA

From its inception in 1969 through F.Y. 1973, the LEAA has provided $2.4 billion to support these basic programs: 1/

* Comprehensive State planning for law enforcement improvement.

* Action programs to reduce crime and enhance the capabilities of criminal justice agencies.

* Technical assistance to build State and local expertise.

* Special grants to modernize and reform the corrections system and strengthen offender rehabilitation efforts.

* Education and training for criminal justice personnel.

* Research into the causes of criminal behavior and development of innovative techniques to prevent and control crime.

* Development of reliable statistics on crime, offenders, and the operations of the criminal justice system.

* Adoptation and utilization of advanced technology for the criminal justice system.

Since 35 percent of the funds go to the states under a revenue sharing approach, statistics are unavailable to determine the percentage of funds going specifically to rural areas or to deal specifically with rural law enforcement problems. Apart from that, the program has not been free of controversy. Many complaints are heard about the use of the program to over-arm and over-staff police forces. Such complaints are not limited to big

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1/ 5th Annual Report of the Law Enforcement Assistance Administration for Fiscal Year 1973, p. 1.

city police forces arming against a feared renewal of the riots of the 60's. For example, Tom Gish, Editor and Publisher of the Mountain Eagle, a weekly newspaper published in Whitesburg, Kentucky, recently described the effects of increased funding for law enforcement purposes on his rural community:

"In recent years, we have been told at every turn that we must be concerned about law and order, that crime is getting out of hand. Federal money has come in...revenue-sharing funds, anti-crime funds, and all at once we have a small army of city police, sheriff's deputies, county patrolmen, and state police. No more are we a town with one night policeman and one day policeman.

"My own assessment is that all those new law officers -- and they add up to a couple of dozen -- felt they had to be doing something with their souped-up cars, their fancy new uniforms, their Mace and riot-control guns, and their billy clubs. They just couldn't stand being dressed up and armed for the crime or riot that doesn't occur. Those kids down on the bridge with their long hair and blue jeans gradually became an irresistible object. We played cowboys and Indians. The kids, needless to say, were the Indians.

"Kids were jailed. Sometimes they were beaten with billy clubs, with pistols, and with fists. Young kids, never in any kind of trouble in their lives, were hauled off to jail...kept in jail overnight or longer, and denied permission to use the telephone....

"In a short period of time, four youths were shot by sheriff's deputies in different incidents, and four other youths were killed in a high-speed police chase."

There can be little question that the experience in Whitesburg was not intended by Congress when it established and funded the LEAA. Yet, it can be legitimately concluded that the method of providing the funds to state and local governments, that is, through a revenue sharing approach without definitive guidelines on the use of funds, will produce such a result.

LEGAL SERVICES

As pointed out earlier, the proportion of funds going to rural areas for legal services is less than 9 percent. There can be no rational justification for such disparity yet there is nothing in the legislation passed in 1974 creating an independent Legal Services Corporation that would lead one to conclude that this disparity won't continue.

PROPOSALS FOR REFORM

Any proposals for reform in the area of rural law enforcement, judicial process and legal assistance would not be complete without calling for a full employment strategy which would give all rural people the opportunity to be gainfully employed at a decent wage. Not only should such strategy include public service employment for the purpose of upgrading the quality of law enforcement and judicial personnel and providing adequate numbers of attorneys and paralegal assistance, but full employment would go far in reducing crime and providing access to fee for service attorneys.

But even with full employment there will remain a need for reform of several programs and concepts.

FEDERAL PROGRAMS

The manner in which federal dollars under the LEAA are granted to the states, and the purposes to which they are put, must be reexamined. A fair share of those dollars must go to rural jurisdictions to improve the quality of law enforcement, judicial process and corrections. Hardware, especially weaponry should not be purchased with federal funds. Indeed, the goal ought to be the disarmament of police as well as criminals. Funds for rural area police forces need not go for riot and crowd control measures, but should be used to provide for adequate communication systems, training to insure that recent court decisions relating to persons rights are disseminated and implemented. Funds should be used to upgrade the quality of rural courts by providing training for rural judges, justices of the peace and lay judges.

Quality, action oriented research should be conducted to develop methods of streamlining and upgrading rural court systems in an effort to do away with or minimize the use of lay judges. More funds should be devoted to providing for public defenders in rural areas.

LEGAL ASSISTANCE

Funds provided through the new Legal Services Corporation or any other federal agency for the purposes of insuring adequate legal assistance for the poor should be apportioned equitably between rural and urban areas. The poverty population in each jurisdiction is one measure, but some consideration should be given to the large geographical areas that must be served in rural areas. At the very least, and as a beginning, each rural county seat should have a legal services office with outreach capabilities to the smaller communities within the county.

LEGAL EDUCATION

Law schools should begin to give attention in their curriculums to specific rural issues and practice -- much as they did in the 1960's when they focused some attention on urban needs. Attempts should be made to recruit and maintain students from rural areas who would likely return to be of service to their communities.

EQUAL OPPORTUNITY

Minorities have traditionally lagged in employment in law enforcement, judicial and legal professions. Affirmative action plans must be implemented by federal, state and local officials to insure minority participation equivalent to their percentage of the population.